

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Billy Ray Jackson, #242892,)	C/A No. 9:04-2052-JFA-GCK
)	
Petitioner,)	
v.)	ORDER
)	
Warden, Lieber Correctional Institution,)	
)	
Respondent.)	
_____)	

This matter is before the court for review of the Magistrate Judge's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

In accordance with established procedures in this District, the case was referred to a Magistrate Judge for pretrial handling. In a detailed and comprehensive Report and

Recommendation filed with the court on April 26, 2005, the Magistrate Judge suggests that the respondents' motion should be granted. The Magistrate Judge also notes that since the petition seeks relief on charges that have not been adjudicated, then the petition must be construed as one brought pursuant to 28 U.S.C. § 2241.

The respondent filed a motion for summary judgment on September 24, 2004 to which the petitioner has replied.¹ Additionally, the petitioner was advised of his right to file objections to the Magistrate Judge's Report and Recommendation. However, no objections were filed within the time limits prescribed by the Local Rules.

The court has carefully reviewed the record in this case, the applicable law, and the Report and Recommendation, and finds the Magistrate's suggested disposition is proper. For the foregoing reasons, the Report and Recommendation is incorporated herein by reference and respondents' motion for summary judgment is granted.

IT IS SO ORDERED.

June 15, 2005
Columbia, South Carolina

s/ Joseph F. Anderson, Jr.
United States District Judge

¹ The petitioner was advised by order of the Magistrate Judge of the necessity to respond to the motion pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975).